

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

THOMAS STONE,

Petitioner,

vs.

JAMES G. COX, et al.,

Respondents.

Case No. 3:14-cv-00476-RCJ-WGC

**ORDER**

Petitioner has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#1). The court has reviewed it pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will dismiss one ground for relief because it is without merit. The court will serve the petition upon respondents for a response to the remaining grounds.

Pursuant to a plea of guilty, petitioner was convicted in state district court of one count of attempted sexual assault. Although petitioner did not file a timely direct appeal, the Nevada Supreme Court determined that petitioner was deprived of a direct appeal. In a delayed direct appeal pursuant to Rule 4(c) of the Nevada Rules of Appellate Procedure, the Nevada Supreme Court affirmed the judgment of conviction. Petitioner then filed a post-conviction petition in state district court, which denied the petition. Petitioner appealed, and the Nevada Supreme Court affirmed. The current federal petition followed.

In ground 1, petitioner claims that his direct-appeal counsel provided ineffective assistance because she did not present the arguments as issues of federal law. petitioner claiming ineffective assistance of counsel must demonstrate (1) that the defense attorney's representation "fell below an

1 objective standard of reasonableness,” Strickland v. Washington, 466 U.S. 668, 688 (1984), and (2)  
2 that the attorney’s deficient performance prejudiced the defendant such that “there is a reasonable  
3 probability that, but for counsel’s unprofessional errors, the result of the proceeding would have  
4 been different,” id. at 694. “[T]here is no reason for a court deciding an ineffective assistance claim  
5 to approach the inquiry in the same order or even to address both components of the inquiry if the  
6 defendant makes an insufficient showing on one.” Id. at 697.

7 This ground is without merit. The court takes judicial notice of the on-line docket of the  
8 Nevada Supreme Court in Stone v. State, No. 57005.<sup>1</sup> In its order of affirmance, filed on February  
9 9, 2012, the Nevada Supreme Court cited its own decisions, but those decisions themselves applied  
10 principles of federal law regarding the validity of guilty pleas and equal protection. Even if  
11 appellate counsel did not cite these cases herself, petitioner suffered no prejudice because the  
12 Nevada Supreme Court recognized the issues of federal law. The court dismisses ground 1.

13 Ground 3 is a pages 7, 7a, and 7b of the petition. The parties should know that pages 7a and  
14 7b are reversed in the copy of the petition in the court’s on-line docket.

15 IT IS THEREFORE ORDERED that ground 1 of the petition (#1) is **DISMISSED**.

16 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney  
17 General for the State of Nevada, as counsel for respondents.

18 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a  
19 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the  
20 petition.

21 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date  
22 on which the petition was served to answer or otherwise respond to the petition. Respondents shall  
23 raise all potential affirmative defenses in the initial responsive pleading, including lack of  
24 exhaustion and procedural default. Successive motions to dismiss will not be entertained. If  
25 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing  
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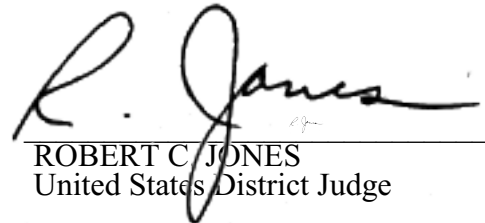
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28 <sup>1</sup><http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=25146> (last visited on  
November 18, 2014).

1 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five  
2 (45) days from the date on which the answer is served to file a reply.

3 IT IS FURTHER ORDERED that any exhibits filed by the parties shall be filed with a  
4 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments  
5 that are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits  
6 in the attachment. The hard copy of any additional state court record exhibits shall be  
7 forwarded—for this case—to the staff attorneys in Las Vegas.

8 IT IS FURTHER ORDERED that henceforth, petitioner shall serve upon respondents or, if  
9 appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or  
10 other document submitted for consideration by the court. Petitioner shall include with the original  
11 paper submitted for filing a certificate stating the date that a true and correct copy of the document  
12 was mailed to the respondents or counsel for the respondents. The court may disregard any paper  
13 received by a district judge or magistrate judge that has not been filed with the clerk, and any paper  
14 received by a district judge, magistrate judge, or the clerk that fails to include a certificate of service.

15 Dated: November 19, 2014.

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ROBERT C. JONES  
United States District Judge